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Attorney for Plaintiff/Cross-  
Defendant Paul Montwillo

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

PAUL MONTWILLO,

Plaintiff,

vs.

WILLIAM TULL; DANIEL GIBBY; GIBBY  
NOVELTIES, LLC dba ARSENIC & APPLE  
PIE; DOES 1-100, inclusive,

Defendants.

WILLIAM TULL,

Counter-Claimant,

vs.

PAUL MONTWILLO, an individual, and  
DOES 21 through 30, inclusive,

Counter-Defendants.

Case No.: C 07 3947 SI

**CROSS-DEFENDANT PAUL  
MONTWILLO'S ANSWER TO  
COUNTER CLAIM**

Counter Claim Filed: January 15, 2008

Cross-defendant Paul Montwillo hereby admits, denies, and responds to counter-complainant William Tull's Counter Claim. Cross-defendant reserves the right to file appropriate amendments to this Answer if necessary, if and when additional information is obtained.

MONTWILLO v. TULL (et al.)  
MONTWILLO'S ANSWER TO COUNTER CLAIM

**SPECIFIC ADMISSIONS AND DENIALS**

1. Admit.

2. Admit.

3. Denied to the extent cross-defendant does not have sufficient information to accurately admit or deny allegation.

4. Admit.

5. Cross-defendant admits that counter-defendant and counter-claimant formed Arsenic & Apple Pie, LLC in April of 1999 for the purpose of manufacturing and distributing dolls known as "trailer trash dolls" and other dolls. Cross-defendant denies Arsenic & Apple Pie, LLC was organized to design dolls. Cross-defendant admits that Montwillo was responsible for the creative aspects of the dolls, but denies the implication that was the extent to Montwillo's responsibilities within Arsenic & Apple Pie, LLC. Cross-defendant admits that Tull was responsible for some management and underwriting functions, but denies the implication that Tull was solely responsible for management and underwriting. Cross-defendant admits Montwillo and Tull both held 50% interest in Arsenic & Apple Pie, LLC. Cross-defendant denies the business capital structure was a classic "sweat equity" arrangement. Cross-defendant denies the allegation that Tull provided all of the financing for the venture. Cross-defendant denies that he "contributed" his designs for the dolls insofar as the phrase implies that the ownership of the designs was transferred in anyway to Arsenic & Apple Pie, LLC. Cross-defendant admits that he was the creative director for Arsenic & Apple Pie, LLC, which included design functions.

6. Cross-defendant does not have sufficient information to admit nor deny whether Arsenic & Apple Pie, LLC encountered "several years of disappointing sales and the absence of any net profits" or whether "Arsenic & Apple Pie was floundering and had yet to repay any of the first priority loans made to it by Tull." Cross-defendant denies that in July 2004, Arsenic & Apple Pie, LLC was "forced to windup and dissolve" and denies that the dissolution of Arsenic & Apple Pie, LLC was caused in anyway by Montwillo's bankruptcy petition. Cross-defendant denies that Arsenic & Apple Pie, LLC properly made any decision to dissolve, rather the

1 decision was unlawfully and unilaterally made by Tull. Cross-defendant denies that Article IX  
2 of the Operating Agreement automatically requires the windup of operations upon certain  
3 triggering events. Cross-defendant admits that the bankruptcy by a managing member is listed  
4 among the "triggering events listed in the Operating Agreement."

5 7. Cross-defendant does not have sufficient information to admit or deny any of the  
6 allegations in paragraph 7.

7 8. Cross-defendant does not have sufficient information to admit or deny any of the  
8 allegations in paragraph 8.

9 9. Cross-defendant does not have sufficient information to admit or deny any of the  
10 allegations in paragraph 9.

11 10. Cross-defendant admits he filed bankruptcy in April 2002. Cross defendant  
12 admits that he did not specifically list any of the thousands of original drawings and sketches he  
13 produced over his lifetime. Cross-defendant denies that if cross-defendant had listed the doll  
14 designs in his bankruptcy petition the designs would be subject to claims by his creditors or  
15 subject to a claim for conversion of company assets by Arsenic & Apple Pie, LLC.

16 11. Cross-defendant does not have sufficient information to admit or deny any of the  
17 allegations in paragraph 11.

18 12. Cross-defendant incorporates his responses to paragraphs 1 through 11 herein.

19 13. Cross-defendant admits that on July 2, 2004, he filed for copyright registration  
20 number VAu631-337, entitled Talking Pregnant Trailer Trash Doll a.k.a. Trash Talking Trixie,  
21 and number Vau631-338, entitled Trailer Trash Roy Doll a.k.a. Buddy a.k.a. Mullet Doll.

22 14. Admit.

23 15. Cross-defendant denies each and every allegation contained in paragraph 15.  
24 Cross-defendant does not have sufficient information to admit or deny any of the allegations in  
25 paragraph 15, except that cross-defendant admits he did not seek consent from Tull to file  
26 copyright applications.

27 16. Cross-defendant objects to the allegations contained in paragraph 16 as an  
28 assertion of a legal conclusion and not an assertion of fact that can be admitted or denied. To the

1 extent the paragraph contains assertions of fact, cross-defendant denies each and every factual  
2 assertion.

3 17. Cross-defendant objects to the allegations contained in paragraph 17 as an  
4 assertion of a legal conclusion and not an assertion of fact that can be admitted or denied. To the  
5 extent the paragraph contains assertions of fact, cross-defendant denies each and every factual  
6 assertion.

7 18. Cross-defendant objects to the allegations contained in paragraph 18 as an  
8 assertion of a legal conclusion and not an assertion of fact that can be admitted or denied. To the  
9 extent the paragraph contains assertions of fact, cross-defendant denies each and every factual  
10 assertion.

11 19. Cross-defendant incorporates his responses to paragraphs 1 through 19 herein.

12 20. Cross-defendant admits that the Operating Agreement contains an arbitration  
13 clause. Cross-defendant denies each and every other allegation contained in paragraph 20.

14 21. Cross-defendant denies each and every allegation contained in paragraph 21.

15 22. Cross-defendant incorporates his responses to paragraphs 1 through 21 herein.

16 23. Cross-defendant objects to the allegations contained in paragraph 23 as an  
17 assertion of a legal conclusion and not an assertion of fact that can be admitted or denied. To the  
18 extent the paragraph contains assertions of fact, cross-defendant denies each and every factual  
19 assertion.

20 24. Cross-defendant objects to the allegations contained in paragraph 24 as an  
21 assertion of a legal conclusion and not an assertion of fact that can be admitted or denied. To the  
22 extent the paragraph contains assertions of fact, cross-defendant denies each and every factual  
23 assertion.

#### 24 AFFIRMATIVE DEFENSES

25 1. Cross-defendant alleges that each and every allegation in cross-claimant's  
26 counter claim is barred subject to the principles of accord and satisfaction.

2. Cross-defendant alleges that each and every allegation in cross-claimant's counter claim is barred subject to the arbitration provision of the operating agreement between the parties.

3. Cross-defendant alleges that each and every allegation in cross-claimant's counter claim is barred since cross-claimant assumed the risk of the underlying agreement.

4. Cross-defendant alleges that each and every allegation in cross-claimant's counter claim is barred since cross-complainant was engaged in contributory negligence.

5. Cross-defendant alleges that each and every allegation in cross-claimant's counter claim is barred cross-defendant acted under duress.

6. Cross-defendant alleges that each and every allegation in cross-claimant's counter claim is barred subject to the principle of estoppel.

7. Cross-defendant alleges that each and every allegation in cross-claimant's counter claim is barred for failure of consideration.

8. Cross-defendant alleges that each and every allegation in cross-claimant's counter claim is barred based on fraudulent activities of the cross-complainant and his attorney.

9. Cross-defendant alleges that each and every allegation in cross-claimant's counter claim is barred subject to the principle of laches.

10. Cross-defendant alleges that each and every allegation in cross-claimant's counter claim is barred subject to the statute of limitations.

11. Cross-defendant alleges that each and every allegation in cross-claimant's counter claim is barred subject to the statute of frauds.

12. Cross-defendant alleges that each and every allegation in cross-claimant's counter claim is barred subject to waiver.

13. Cross-defendant alleges that each and every allegation in cross-claimant's counter claim is barred

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1  
2 Dated: February 14, 2008

SOMMERS LAW GROUP

A handwritten signature in black ink, appearing to read 'Stephen Sommers', is written over a horizontal line.

Stephen Sommers  
Attorney for Plaintiff/Cross-Defendant  
Paul Montwillo